

110TH CONGRESS  
1ST SESSION

# S. 1322

To amend the Internal Revenue Code of 1986 to improve the operation of employee stock ownership plans, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 7, 2007

Mrs. LINCOLN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to improve the operation of employee stock ownership plans, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Employee Stock Own-  
5       ership Plan Promotion and Improvement Act of 2007”.

1 **SEC. 2. 10 PERCENT PENALTY TAX NOT TO APPLY TO CER-**  
 2 **TAIN S CORPORATION DISTRIBUTIONS MADE**  
 3 **ON STOCK HELD BY EMPLOYEE STOCK OWN-**  
 4 **ERSHIP PLAN.**

5 (a) IN GENERAL.—Clause (vi) of section 72(t)(2)(A)  
 6 of the Internal Revenue Code of 1986 (relating to general  
 7 rule that subsection not to apply to certain distributions)  
 8 is amended by inserting before the comma at the end the  
 9 following: “or any distribution (as described in section  
 10 1368(a)) with respect to S corporation stock that con-  
 11 stitutes qualifying employer securities (as defined by sec-  
 12 tion 409(l)) to the extent that such distributions are paid  
 13 to a participant in the manner described in clause (i) or  
 14 (ii) of section 404(k)(2)(A)”.

15 (b) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to distributions made after the  
 17 date of the enactment of this Act.

18 **SEC. 3. ESOP DIVIDEND EXCEPTION TO ADJUSTMENTS**  
 19 **BASED ON ADJUSTED CURRENT EARNINGS.**

20 (a) IN GENERAL.—Section 56(g)(4)(C) of the Inter-  
 21 nal Revenue Code of 1986 (relating to disallowance of  
 22 items not deductible in computing earnings and profits)  
 23 is amended by adding at the end the following new clause:

24 “(vii) TREATMENT OF ESOP DIVI-  
 25 DENDS.—Clause (i) shall not apply to any  
 26 deduction allowable under section 404(k) if

1           the deduction is allowed for dividends paid  
2           on employer securities held by an employee  
3           stock ownership plan established or author-  
4           ized to be established before March 15,  
5           1991.”.

6           (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to taxable years beginning after  
8 December 31, 1989.

9           (c) WAIVER OF LIMITATIONS.—If refund or credit of  
10 any overpayment of tax resulting from the application of  
11 the amendment made by this section is prevented at any  
12 time before the close of the 1-year period beginning on  
13 the date of the enactment of this Act by the operation  
14 of any law or rule of law (including res judicata), such  
15 refund or credit may nevertheless be made or allowed if  
16 claim therefor is filed before the close of such period.

17 **SEC. 4. AMENDMENTS RELATED TO SECTION 1042.**

18           (a) DEFERRAL OF TAX FOR CERTAIN SALES TO EM-  
19 PLOYEE STOCK OWNERSHIP PLAN SPONSORED BY S COR-  
20 PORATION.—

21           (1) IN GENERAL.—Section 1042(c)(1)(A) of the  
22 Internal Revenue Code of 1986 (defining qualified  
23 securities) is amended by striking “C”.

1           (2) EFFECTIVE DATE.—The amendment made  
 2       by paragraph (1) shall apply to sales after the date  
 3       of the enactment of this Act.

4       (b) REINVESTMENT IN CERTAIN MUTUAL FUNDS  
 5 PERMITTED.—

6           (1) IN GENERAL.—Clause (ii) of section  
 7       1042(c)(4)(B) of the Internal Revenue Code of 1986  
 8       (defining operating corporation) is amended to read  
 9       as follows:

10                   “(ii) FINANCIAL INSTITUTIONS, IN-  
 11                   SURANCE COMPANIES, AND MUTUAL  
 12                   FUNDS.—The term ‘operating corporation’  
 13                   shall include—

14                           “(I) any financial institution de-  
 15                           scribed in section 581,

16                           “(II) any insurance company  
 17                           subject to tax under subchapter L,  
 18                           and

19                           “(III) any regulated investment  
 20                           company if substantially all of the se-  
 21                           curities held by such company are se-  
 22                           curities issued by operating corpora-  
 23                           tions (determined without regard to  
 24                           this subclause).”.

1           (2) EFFECTIVE DATE.—The amendment made  
 2           by paragraph (1) shall apply to sales of qualified se-  
 3           curities after the date of the enactment of this Act.

4           (c) MODIFICATION TO 25-PERCENT SHAREHOLDER  
 5 RULE.—

6           (1) IN GENERAL.—Subparagraph (B) of section  
 7           409(n)(1) of the Internal Revenue Code of 1986 (re-  
 8           lating to securities received in certain transactions)  
 9           is amended to read as follows:

10                   “(B) for the benefit of any other person  
 11                   who owns (after the application of section  
 12                   318(a)) more than 25 percent of—

13                           “(i) the total combined voting power  
 14                           of all classes of stock of the corporation  
 15                           which issued such employer securities or of  
 16                           any corporation which is a member of the  
 17                           same controlled group of corporations  
 18                           (within the meaning of subsection (l)(4))  
 19                           as such corporation, or

20                           “(ii) the total value of all classes of  
 21                           stock of any such corporation.”.

22           (2) EFFECTIVE DATE.—The amendment made  
 23           by paragraph (1) shall take effect on the date of the  
 24           enactment of this Act.

1 **SEC. 5. DE MINIMIS EXCEPTION TO DIVERSIFICATION OF**  
2 **INVESTMENT REQUIREMENT.**

3 (a) IN GENERAL.—Paragraph (28) of section 401(a)  
4 of the Internal Revenue Code of 1986 (relating to addi-  
5 tional requirements relating to employee stock ownership  
6 plans) is amended by adding at the end the following new  
7 subparagraph:

8 “(D) EXCEPTION FOR DE MINIMIS AC-  
9 COUNT BALANCE.—A plan shall not fail to meet  
10 the requirements of this subparagraph for a  
11 plan year solely because the plan provides that  
12 clause (i) does not apply to any participant’s  
13 account in the plan which, as of the close of the  
14 preceding plan year, has an account balance  
15 which does not exceed \$2,500.”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 this section shall apply to plan years beginning after the  
18 date of the enactment of this Act.

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